

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 17-22 were pending. Claims 17-20 are cancelled presently, without prejudice or disclaimer, while claims 21-22 are amended and claims 23-25 are added. Upon entry of this response, therefore, claims 21-25 will be pending.

The new claims are amply supported by the specification. For instance, see the application at page 6, line 9 – page 7, line 3, at page 12, line 21 – page 14, line 3, at page 18, lines 20-24, and in Figure 5.

Drawing Objections

The drawings are subject to objection because Figures 2 and 7 are deemed not of sufficient quality to identify the features. The color versions of Figures 2 and 7, filed in response to the Office Action dated March 15, 2010, sufficiently identify the features in Figures 2 and 7. If Examiner Lipitz continues to object to Figures 2 and 7, then applicants respectfully ask that he identify with particularity the aspect(s) that he requires to be modified, and how. Otherwise, withdrawal of the objection is requested.

Rejection of Claims 1-5 and 13-14 Over Kittrell

Claims 1-5 and 13-14 are rejected for alleged anticipation over U.S. patent No. 4,913,142 (“Kittrell”). Claims 1-5 and 13-14 were cancelled in the response to the Office action dated March 15, 2010. Because the examiner presently refers to the substance of claims 17-18 and 20-21, applicants assume that he has intended to reject claims 17-18 and 20-21 over Kittrell, not claims 1-5 and 13-14.

Without acceding to the stated grounds for rejection, applicants have chosen to advance prosecution by cancelling claims 17-18 and 20 and by amending claim 21 to depend from new claim 24. For the reasons detailed below, applicants submit that the claims thus amended are to subject to this rejection but instead are allowable.

Rejection of Claims 19 and 22 Over Kittrell

Claims 19 and 22 are rejected for alleged obviousness over Kittrell. Claim 19 has been cancelled and claim 22 amended to depend from new claim 24. For the reasons set out below, the imposition of this rejection as to claim 22 is obviated.

New Claims

The various grounds for rejection lodged against the canceled claims are inapposite to the present claims, including independent claim 24. The latter claim is directed to a method for closing a hole in a blood vessel wall of a subject. The hole in question was formed by a sheath holding a catheter, which was inserted into the blood vessel wall.

The claimed method entails “introducing into the sheath at least one of a first optical fiber and a second optical fiber.” With this arrangement there is a “monitoring [of] the amount of light backscattered from tissue in the subject” such that, “when the tissue that surrounds the distal end of [an] optical fiber is determined to be a blood vessel wall,” then “a welding laser” is generated and transmitted “through the optical fiber in the sheath to impinge on the hole in the blood vessel wall while the sheath and the optical fiber are pulled away from the hole.” This methodology ensures that the sheath removable hole is closed quickly and that the tissue is not further damaged during welding. If the sheath and optical fiber are not pulled away from the hole during welding, the tissue can be destroyed because it is overexposed to the welding laser.

The art of record fails to disclose and would not have suggested all of the elements of claim 24. Pursuant to Kittrell, for instance, when a fiber is aimed at plaque then “high power laser 92 ... is turned on (or it may be already on), [and] an appropriate level of power [is] selected by an attenuator 47, and a shutter 94 [is] opened for a predetermined amount of time to remove a certain amount of this diseased tissue” (column 25, lines 4-17). The diseased tissue is the plaque (*id.*).

Pursuant to Kittrell, therefore, the high power laser 92 does not weld tissue but rather destroys it, by removing plaque. Furthermore, simply altering the power level selected by attenuator 47, per Kittrell, would not accomplish the presently recited tissue welding, *i.e.*, a closing of the sheath-removing hole to prevent further damage to the blood vessel. That is, Kittrell does not teach or suggest, as the present claims require, that there is movement,

coincident with generation of the laser, of either the fiber or the sheath. To the contrary, Kittrell teaches that the fiber and sheath remain stationary when the fiber is aimed at an area of interest (see column 25, lines 4-17).

Acting in this manner, per Kittrell, would mean that the sheath-removal hole could not be closed quickly and that the tissue would be further damaged, contrary to applicants' claimed invention. Conversely, modifying Kittrell in a manner arguably approximating applicants' claimed invention would run counter to the purpose of Kittrell's method. For both of these reasons, *inter alia*, the pending rejection cannot stand.

CONCLUSION

In light of the foregoing, applicants submit that this present application is in condition for allowance, and they request an early indication to this effect. Examiner Lipitz is invited to contact the undersigned directly, should he feel that any issue warrants further consideration.

Respectfully submitted,

Date 2 November 2010

By S. A. Bent

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5404
Facsimile: (202) 672-5399

Stephen A. Bent
Attorney for Applicants
Registration No. 29,768

The Commissioner is hereby authorized to charge any additional fees, which may be required under 37 C.F.R. §§ 1.16-1.17, and to credit any overpayment to Deposit Account No. 19-0741. Should no proper payment accompany this response, then the Commissioner is authorized to charge the unpaid amount to the same deposit account. If any extension is needed for timely acceptance of submitted papers, then Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of the relevant fee(s) from the deposit account.